

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Vimal Chand Lodha Vs. The Commissioner of Income Tax Jaipur & Another
(SB Civil Writ Petition No.2343/1999)

SB Civil Writ Petition under Article
226 and 227 of the Constitution of India.

Date of Judgment:

October 16, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. P.K. Kasliwal, for the petitioner.

Mrs. Parinitoo Jain, for the respondents.

BY THE COURT:

The petitioner seeks to quash the order of Commissioner of Income Tax, passed under section 279(1) of the Income Tax Act, 1961 (for short 'the Act').

2. Contextual facts depict that the petitioner being proprietor of M/s. Vimal Industries Ajmer was required to file income tax returns for the assessment years 1980-81 to 1983-84 on July 31, 1980, July 31, 1981 and July 31, 1982 and the same were respectively filed on November 8, 1983, January 16, 1984, September 21, 1984 and May 16, 1985 late by 39, 29, 35 and 21 months. The Assessing Officer issued show cause notice for late filing of the returns to which the petitioner filed reply that due to non completion of accounts and various other reasons returns could not be filed. The Assessing Officer being dissatisfied the reasons imposed penalties on the petitioner. The Commissioner of Income Tax authorised the Assessing

Officer to file complaint against the petitioner under section 276 (CC) of the Act. Consequently the complaint was filed in the court of Special Judicial Magistrate (Economic Offences) Rajasthan Jaipur. The appeal preferred by the petitioner against the penalty part was however allowed setting aside the penalty for two years and for remaining two years the penalty was reduced.

3. I have heard learned counsel for the parties and scanned the material on record.

4. In view of the ratio indicated by Apex Court in K.C.Builders Vs. Assistant Commissioner of Income Tax (2004 Vol.265 Income Tax Reports 562), I find merit in the contentions of the petitioner. In a similar matter this court accepted the writ petition of the petitioner (SBCWP No.2342/1999 decided on November 14, 2005).

5. Consequently, the writ petition stands allowed and the impugned order to the extent of authorisation of filing the complaint in the court of Special Judicial Magistrate (Economic Offences) Rajasthan Jaipur is quashed.

(Shiv Kumar Sharma),J.

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